

AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

WAC 296-128-500 Purpose. This regulation is adopted in accordance with chapter 49.46 RCW to define the terms "bona fide executive, administrative, or professional capacity or in the capacity of outside salesman," to define salary basis and to establish a procedure for computing overtime pay.

An employee who meets the definitions of executive, administrative, or professional and who is paid on a salary basis (except as provided for in WAC 296-128-530(5)) is considered exempt from the requirements of chapter 49.46 RCW. Payment of a salary does not in and of itself exempt a worker from the minimum wage and overtime requirements.

NEW SECTION

WAC 296-128-532 Deductions for salaried, exempt employees. (1) **When does this section apply?** This section applies to any employee who is paid on a salary basis and who meets the definitions of executive, administrative, or professional.

(2) **What does salary basis mean?** Salary is where an employee regularly receives for each pay period of one week or longer (but not to exceed one month) a predetermined monetary amount (the salary) consisting of all or part of his or her compensation, which amount will not be less than required to be paid pursuant to WAC 296-128-510 through 296-128-530. The salary shall not be subject to deduction because of variations in the quantity or quality of the work performed, except as provided in this section. Under RCW 49.46.130 (2)(a), salaried employees may receive additional compensation or paid time off and still be considered exempt.

(3) **When are deductions from salary allowed?**

(a) If the employee performs no work in a particular week, regardless of the circumstances, the employer may deduct for the entire week.

(b) When the employee takes at least a whole day off for personal reasons other than sickness or accident, the employer may deduct in full day increments.

(c) Deductions for absences due to sickness or disability may be made in full day increments if the deduction is made according to the employer's bona fide plan, policy or practice of providing paid sick and disability leave (other than industrial accidents or disability).

(i) Deductions are permitted when either leave is exhausted or the employee has not yet qualified under the plan.

(ii) Deductions are permitted even if an employee receives compensation under that plan or under workers' compensation laws.

(d) When an employee is eligible for the federal Family and Medical Leave Act 29 U.S.C. Sec. 2611 et seq., deductions may be made for partial day absences due to leave taken according to that law and the applicable provisions in chapter 49.78 RCW.

(e) In the first and final week of employment, an employee's salary may be prorated for the actual days worked.

(f) Deductions are allowed for disciplinary absences that are imposed

for violations of safety rules of major significance. This includes only those relating to the prevention of serious danger to the plant, the public, or other employees, such as rules prohibiting smoking in explosive plants or around hazardous or other flammable materials.

(g) Deductions are allowed when authorized under RCW 49.48.010, 49.52.060, or WAC 296-126-025.

(4) What are improper deductions from salary?

(a) Deductions are not permitted for partial days of work, except as permitted by subsection (3)(d) of this section or by WAC 296-128-533.

(b) Deductions are not permitted for lack of work for any amount of time less than a full week.

(c) Deductions are not permitted when the employee participates in jury duty, attendance as a witness, or temporary military leave if the employee performs any work during that week. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay.

(d) Deductions are not permitted for absences due to sickness or disability if the employer does not have a bona fide plan, policy or practice in place for sick or disability leave.

(e) Any other deductions not allowed under subsection (3) of this section.

(5) Is a "window of correction" permitted? A limited window of correction will be permitted when an improper deduction is shown to be infrequent and inadvertent and the employer immediately begins taking corrective steps to promptly resolve the improper deduction when brought to the attention of the supervisor or other appropriate representative of the employer. Such corrections will be allowed only to the extent that the deduction is not due to lack of work or part of a pattern of the same or substantially similar deductions.

(6) What deductions may be made from leave banks?

(a) Deductions may be made from compensatory time in any increment.

(b) Deductions may be made from bona fide leave banks in partial or full day increments. However, partial day deductions may be made only on the express or implied request of the employee for time off from work. Leave bank deductions may not be made for less than one hour.

A "bona fide leave bank" is a benefit provided to employees in the case of absence from work due to sickness or personal time off. It must be in writing and contained in contract or agreement, or in a written policy that is distributed to employees. A leave bank policy, or a leave bank provision in a contract or agreement, is not "bona fide" if it is used as a subterfuge to circumvent or evade the requirements of this regulation.

(c) When leave banks are exhausted, deductions from salary may not be made, except as permitted in subsection (3) of this section.

NEW SECTION

WAC 296-128-533 Public employees. (1) How do the provisions specified in WAC 296-128-532 affect public employees? WAC 296-128-532 (1) through (5) is applicable to public employees, except that deductions from salary or leave banks are permitted in the following additional circumstances.

(a) Deductions from salary for partial day absences: A public employee who otherwise meets the requirements of WAC 296-128-532 will not be disqualified from the executive, administrative, or professional exemptions on the basis that such public employee is paid according to a pay system that:

(i) Is established by statute, ordinance, or regulation, or by a policy or practice established according to principles of public accountability, under which the public employee accrues sick or personal leave (annual, vacation, etc.); and

(ii) Permits the public employee's pay to be reduced or the public employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work day when accrued leave is not used by a public employee.

(b) **Deductions from leave banks:** Deductions may be made from a public employee's accrued leave banks in any increment in accordance with any statute, ordinance, or regulation, or by a policy or practice established according to principles of public accountability.

(c) **Deductions for furlough:** Deductions from the salary of a public employee for absences where authorized by law due to a budget-required leave of absence will not disqualify the public employee from being paid on a "salary basis" except in the workweek in that the absence occurs and for which the public employee's pay is accordingly reduced.

(2) **What does "public employee" mean?** Public employee means an employee directly employed by a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision or other public agency and includes any department, bureau, office, board, commission or institution of such public entities.